IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2702 OF 2004

Mr. Jairaj Phatak and Ors. .. Petitioners

Vs.

K. Sera Sera Production Ltd. and Anr. .. Respondents

Mr. N.R. Bubna for the Petitioners.
None for Respondent No.1.
Mr. S.S. Tatkare, APP for Respondent No.2-State.

CORAM: S.C. DHARMADHIKARI, J.

Date : December 07, 2005.

P.C.:

1. Rule. Rule is made returnable forthwith. Heard.

2. First petitioner is a Secretary of the Government of Maharashtra and at the relevant time was posted as Managing Director of Maharashtra Film Stage and Cultural Development Corporation, Film City, Goregaon (East), Mumbai. The other petitioners are the Directors of this Corporation.

3. The first respondent filed a complaint being Complaint No.290/S/2003 alleging offences under Section 138 read with 141 of Negotiable Instrument Act. This was on account of dishonour of cheque of

Rs.90 lakhs.

4. It appears that the petitioners herein had preferred an application for exemption on 18th December, 2004 and the Metropolitan Magistrate proceeded to reject the same and issued non-bailable warrants.

5. Upon perusal of the averments in the petition and the annexures to the same, it is clear that the petitioners ought to have been exempted from personal appearance by the Magistrate and in any event he could not have proceeded to issue non-bailable warrants. Accordingly, while issuing the notice this court had already stayed the non-bailable warrants. Now petition is placed for admission. None appears for the first respondent-original complainant.

6. In view of the above, Rule is made absolute in terms of prayer clause (a). The petitioners are at liberty to apply for exemption from personal appearance during the course of the trial and the learned Magistrate shall pass an appropriate order on such application after hearing both the sides.

(S.C. Dharmadhikari,J)